IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1490 OF 2003

Chandra Malgi Hiray ...Petitioner.

Versus

Sau.Indubai C. Hiray
and Anr. ...Respondents.

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Mr.Ashwin Shete, Advocate for the Petitioner.
Mr.P.S.Dani, Advocate for Respondent No.1.
Ms.S.V.Gujare, APP, for Respondent No.2-State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : AUGUST 16, 2006.

P.C.:

1. Heard Mr.Shete learned Counsel for petitioner-husband and Mr.Dani learned Counsel for Respondent No.1-wife.

2. Respondent No.1-wife preferred an application being M.A.No.78/1988 for maintenance under Section 125 of Cr.P.C., which came to be granted. Thereafter, she preferred an application being M.A.No.41 of 1997 before the J.M.F.C. Nandgaon, Nashik for enhancement of maintenance amount. The said application came to be allowed in her favour and maintenance of Rs.350/- came to

be granted to her. Thereafter, the respondent No.1-wife again preferred an application being M.A.NO.116 of 1999 for enhancement of the maintenance amount, wherein she had prayed for granting Rs.1500/- as maintenance to her. The said application came to be partly allowed and earlier amount of Rs.350/- was enhanced by Rs.400/-. Thus, the total maintenance amount granted to the respondent No.1-wife was Rs.750/- per month.

3. Being aggrieved by the quantum of maintenance, both petitioner-husband as well as respondent No.1-wife preferred revisions before the Additional Sessions Judge at Malegaon, Nashik. Both the Revision Applications came to be dismissed by the learned Sessions Judge at Malegaon, Nashik vide order dated 24.4.2003.

4. Being aggrieved by the said orders, this Writ Petition has been preferred by the petitioner-husband.

5. It is contended by Mr.Shete learned Counsel for the petitioner-husband that petitioner has

retired in the year, 1999 and after his retirement he is getting pension of Rs.3129/- per month. Besides this, the petitioner has suffered from a paralytic stroke in the year 2002, due to which he is not able to carry out his day to day activities independently. According to the petitioner he gets monthly pension of Rs.3129/- and out of the said amount he has to pay per month Rs.1100/- towards the helper for helping him to carry out his daily activities and Rs.1500/- towards his medical expenses. Thus, he is left with only Rs.529/- in hand. Hence, it is not possible for him to give an amount of Rs.750/- per month to Respondent No.1-wife. Therefore, according to him, earlier amount of maintenance i.e. Rs.350/- ought to have been maintained.

6. It is seen that M.A.No.116 of 1999 was decided by the learned J.M.F.C.Nandgaon, Nashik on 30.1.2001. In the said order, the pension amount of petitioner i.e. Rs.3129/- per month, has been taken into account, and after taking all the facts and circumstances into consideration, the learned Magistrate had enhanced the maintenance amount of Rs.350/- to Rs.750/- per month.

7. It is the case of the petitioner that he suffered a paralytic stroke; and in support of his contention, reliance is placed on a medical certificate, wherein it is stated that petitioner was under treatment from 11.4.2002 as he had a paralytic stroke. Photo copy of the said certificate is taken on record and marked as "X" for identification.

8. It is seen that Revision Application has been dismissed by the learned Sessions Judge on 24.4.2003. No submission has been made on behalf of the petitioner before the learned Sessions Judge that he has suffered a paralytic stroke and the extent of his disability or the amount of medical expenses that he has required to incur on account of the said disability. No evidence has been led by the petitioner at any stage in respect of suffering paralytic stroke and in respect of medical expenses he is required to incur due to said paralytic stroke. On the other hand, it the case of Respondent No.1-wife that petitioner posseses agricultural land and he also receives rent from his house. This has not been denied by

the petitioner. It is also the case of Respondent No.1-wife that the petitioner owns a Tata-Sumo vehicle, the value of which is Rs.4 lakh to Rs.5 lakh. This also has not been denied by the petitioner. A person who possesses a Tata-Sumo vehicle can easily afford Rs.750/- per month.

9. In view of all these facts, the order of learned Magistrate enhancing the amount of maintenance from Rs.350/- to Rs.750/- cannot be faulted with. Both the orders of learned Magistrate and learned Sessions Judge are just, legal and proper. Hence, no interference is called for. Writ Petition is rejected.

(SMT.V.K.TAHILRAMANI,J.)